

EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations Section 2051-3

VERIFICATION CRITERIA

Final Statement of Reasons

INTRODUCTION:

This regulatory action amends California Code of Regulations (CCR), title 22, section 2051-3, to conform to the list of documents in federal regulations used to verify an individual's true identity and legal right to work.

BACKGROUND:

The Workforce Investment Act (WIA) requires the Employment Development Department's (Department) Job Service (JS) activities to be coordinated and delivered, in partnership with the programs funded under WIA, through the One-Stop Career Center (OSCC) system. The Department's JS staff and WIA funded partner staff are co-located in OSCCs throughout the State. Federal law and regulation require WIA funded partners to determine an individual's right to work as a condition of eligibility for program services. Likewise, State law requires the Department's JS to verify an individual's legal status and right to work before employment services can be provided. The WIA partners rely on Immigration and Naturalization (INS) direction for acceptable documentation while State law and regulation outline the documents acceptable for the Department's JS verification. The lists of acceptable documentation under both programs are, with minor exceptions, similar.

The INS has revised the list of valid employment eligibility and identification verification documents. The INS issued changes to INS Form I-9, Employment Eligibility Verification Form, that either eliminated or clarified the use of INS forms as acceptable identity and work authorization documents. With these changes, California regulations permit documents to be accepted that are no longer considered valid proof of right to work by the INS.

The INS changes to Form I-9 were effective September 30, 1997, by interim rule published at 62 Fed.Reg. 51001-51006 removing four documents from the list of acceptable documents. The change also clarified a subsequent interim rule of February 9, 1999, explaining when receipts may be used in lieu of original documents in two situations when INS Form I-94 is used.

NECESSITY:

Based on the INS changes, the Department's Workforce Investment Division issued Information Bulletin Number WIAB01-41 on October 30, 2001, transmitting these changes to One-Stop Career Center partners to establish eligibility for WIA Title I-B services.

The list of employment eligibility and identity verification forms used by the JS is based on California legislation in CCR, title 22, section 2051-3. Since section 2051-3 has not been amended to reflect the INS changes, the JS is using an obsolete list of documents and a different list than used by WIA One-Stop Career Center staff. As a result, a customer may be found eligible or not eligible for program services based on which program staff, JS or WIA, does the initial assessment of eligibility. Section 2051-3 needs to be amended to conform to federal law and eliminate and clarify for Department staff which INS forms are acceptable.

If there is no amendment to CCR, title 22, section 2051-3, some One-Stop customers may be provided service when not eligible or may be denied service when eligible. The San Diego WIA area has reported that some legal residents have been denied services because of this confusion. One of the goals of the WIA is to provide integrated service. It will be difficult to meet this goal if disparate, obsolete documents are being applied to determine eligibility. Staff of both local JS and WIA programs must use the same list of documents to determine program eligibility.

If CCR, title 22, section 2051-3, is amended, it will clarify to Department staff what employment verification documents are acceptable and help avoid providing or denying services inappropriately. It would also improve coordination between the Department and its One-Stop Career Center partners.

IMPLEMENTATION NEEDS:

Amendments to CCR, title 22, section 2051-3 are as follows:

- Amend subsection (a) to clarify that there are some situations when "one of the authentic documents" will not establish identity and authorization to work. In some cases two documents are needed as outlined by INS.
- Delete the invalid forms listed in sub-subsection (7), (8), (15), and (31) to conform to INS changes and renumber.
- Make other edits for consistency or clarification, and to correct typographical errors in (9), (10), (13), (14), (28), and (29).
- Add the two new INS clarifications about the Record of Arrival and Departure (INS Form I-94) as numbers (30) and (31).
- Coordinate with the Department of Motor Vehicles the amending of CCR, title 13, §15.00 that contains the same list with obsolete INS forms.

REFERENCE CITE:

The Department has added section 9601.7 of the Unemployment Insurance Code as a reference cite.

PLAIN ENGLISH CONFORMING STATEMENT:

The Department has drafted the proposed amendments in plain English pursuant to section 11346.2(a)(1) of the Government Code.

PUBLIC NOTICE AND WRITTEN COMMENT PERIOD, AND WRITTEN COMMENT:

On June 18, 2004, the Office of Administrative Law printed a public notice for this regulatory action in the California Regulatory Notice Register, and the Department posted this public notice on its Internet website. A copy of the public notice, text of the proposed amendments, and the initial statement of reasons were mailed to everyone known to be interested in the Department's regulations.

During the 45-day written public comment period which was held from June 18 through August 2, 2004, no one requested a public hearing. However, the Department received one comment from John K. Riess on the proposed amendments (the faxed letter is included as part of this rulemaking file at Tab No. 5). Mr. Riess's comment is indicated below, followed by the Department's response.

**Letter dated August 2, 2004, received from John K. Riess, Esq.,
Capt. USN Ret.**

Comment

In your notice of June 18th, 2004 you solicited comments regarding changes to verification criteria. I find that the proposed regulation will not have any adverse effect on my operations, nor upon those of my clients. However, I would suggest that one item listed in Section 2501-3 (sic) is inappropriate for identification purposes. Item (6)(D) says that form DD 214 is an acceptable form of identification. In my experience I do not find a level of confidence sufficient to establish anyone's identity with a DD 214 alone. If it is accompanied by a DD 2, then it would be acceptable. The Federal government controls the issuance of DD 2s. No one controls blank DD 214s. DD 214s can be found in blank on any personnelman's desk. Anyone with a typewriter can create an identity with that piece of paper. (It would be harder to find the typewriter!)

Response

The Comment addresses use of Form DD 214 as listed in Item (6)(D). Item (6)(D) is part of the existing text and is not part of the proposed changes to the regulation. Mr. Riess's comments are outside the scope of this rulemaking. (Gov. Code sec. 11346.9(a)(3).) Consequently, no changes to the proposed regulation are warranted as a result of this comment.

FISCAL IMPACT:

Anticipated costs or savings in federal funding to the State: None

Anticipated costs or savings to any State Agency: None

Anticipated costs or savings to any local agency or school district: None

Significant statewide adverse economic impact: The Department does not anticipate this regulatory action will result in any costs to the federal government, to State government, to local county governments, to private individuals, or to businesses and small businesses. Thus, no costs are shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states because this regulation makes only technical, non-substantive or clarifying changes to current regulations. The Department has determined that the proposed amendments will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

The costs impact on representative persons or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Anticipated impact on housing costs: These proposed amendments will have no effect on housing costs.

Anticipated nondiscretionary costs or savings imposed upon local agencies:
None

SMALL BUSINESS IMPACT:

The Department has determined the proposed amendments will have no impact on small businesses, as the proposed amendments will not impose any new mandates, requirements or cost from the enforcement of this regulation on small businesses.

LOCAL MANDATE DETERMINATION:

The Department has determined that these proposed amendments will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

CONSIDERATION OF ALTERNATIVES:

In accordance with section 11346.9(a)(4) of the Government Code, the Department has determined that no alternative considered would be more effective in carrying out the purpose for which this action was intended than the proposed amendments. The Department has also determined that no alternative would be as effective and less burdensome to affected private persons than the proposed amendments.
